IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1577 of 2004

BHAGWATILAL
V/S
VARDICHAND & ORS

Mr. KR SARAN, for the appellant / petitioner

Date of Order : 29.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned order.

It is a different story that the learned counsel is not ready with the matter, and is not answering the queries of the Court. Be that as it may. By the impugned order, the learned Lower Appellate Court had dismissed the appellant's application filed under Order 41 Rule 19 CPC holding that the appellant has failed to make out any sufficient cause for absence on the date when the appeal was called, so also for the delay in filing the restoration application.

The matter as informed by the learned counsel for the appellant is that the appellant had filed an application under Order 9 Rule 13 on 18.5.1998, which was rejected on 12.11.1998, while the suit was decreed on 12.12.1995. I may make it clear that all these dates and facts are being incorporated as informed by learned counsel for the appellant. Learned counsel is not able to inform the Court, as to when the appeal was filed against rejection of the application under Order 9 Rule 13. However, it was dismissed on 5.9.2001, and the restoration application has been filed on 12.9.2002. The only ground given in the application is that after engaging the counsel, the appellant went to Bombay in connection with his business, and rested assured on the assurance of the advocate, that he will be called as and when needed. Then it is pleaded that on 5.9.2001, the appellant was in Bombay, and came to learn about dismissal of the appeal only when he came from Bombay on 6.9.2002. It is also alleged that the counsel could not

appear because he did not happen to note the date of hearing in his diary. It is a different story that the appellant has given his address in the Lower Appellate Court, so also before this Court to be resident of Jagat, Tehsil Girva, District Udaipur, and there is no material to show that he is living in Bombay. That apart when he is a resident of Jagat, Tehsil Girva, and if he were to go to Bombay, he is supposed to make arrangements of the litigation.

Likewise, so far as the ground given about the lawyer having not noted the date of hearing in his diary itself, learned counsel for the appellant positively informs that no affidavit of the advocate was filed in this regard, whether in the Court below, or before this Court.

In such circumstances, it cannot be said that the learned Lower Appellate Court has committed any error in passing the impugned order.

The appeal thus, has no force, and is dismissed summarily.

( N P GUPTA ),J.

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